Peck, Incorporated *and* Local 741, Laborers International Union of North America *and* Local 303, Graphic Arts International Union, AFL-CIO-CLC. Cases 25-CA-13476 and 25-CA-13787

28 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 25 May 1982 Administrative Law Judge Elbert D. Gadsden issued the attached decision. The General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Peck, Incorporated, Bloomington, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(l).

"(l) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly.

"(b) Remove from its files any reference to the unlawful discharge of Doug Dixon and notify him in writing that this has been done and that the discharge will not be used against him in any way."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of their protected rights by:

(a) Telling employees not to talk with an investigative agent of the National Labor Relations Board.

(b) Promising employees benefits in the midst of their organizing campaign in an effort to dissuade them from selecting the Union as their representative.

(c) Asking employees why they think they need a union, telling employees we would rather deal with them than with the Union, and asking employees for their opinion about the Union.

(d) Telling employees we would know who signed the cards for the Union, thereby creating the impression among employees that their organizing activities are under surveillance by us.

(e) Telling employees we have 3000 applications on file and, if they are unhappy there, they know what they can do.

(f) Telling employees notices to employees to be posted on the employees' bulletin board must be signed and okayed by us before posting.

---

[1] In the absence of exceptions, we adopt pro forma the judge's finding that Respondent's president, Flander, unlawfully conveyed a message of futility when he stated that only the skilled employees were unionized at the Respondent's Minnesota plant and that the packaging department employees never selected a union to represent them.

In the absence of exceptions, we also adopt pro forma the judge's finding that the Respondent's president, Flander, unlawfully engaged in surveillance by staring at employee Barbara May on two separate occasions while she was working.

The General Counsel has excepted to the judge's finding that Supervisor Tim Adams did not unlawfully interrogate Barbara May. In light of the Respondent's numerous other violations of Sec. 8(a)(1) and (3), we find it unnecessary to reach this issue. It would be cumulative to find an additional unlawful interrogation in the circumstances of this case, and the remedy would not be altered even if the violation were found.

We agree that the Respondent's discharge of employee Doug Dixon violated Sec. 8(a)(3) and (1). In doing so we do not adopt the judge's statement that *Wright Line*, 251 NLRB 1083 (1980), is "not applicable" to the discharge. We find that the General Counsel has met its burden under *Wright Line* of establishing that protected conduct was a motivating factor in the Respondent's decision, and we also find that Respondent has failed to establish that it would have discharged Dixon even in the absence of his protected activity.

[2] In support of his recommendation that the Board issue a broad cease-and-desist order, the judge erroneously relied on *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532 (4th Cir. 1941), enfg. as modified 23 NLRB 1058 (1940). The proper analysis for determining the scope of a cease-and-desist order is set forth in *Hickmott Foods*, 242 NLRB 1357 (1979). Utilizing that analysis, we do not find that the Respondent's unlawful conduct warrants the issuance of a broad order. Consequently, and since the judge failed to include any injunctive language in the recommended Order, we shall modify the Order by inserting a provision requiring the Respondent to cease and desist from violating the Act "in any like or related manner."

Consistent with our decision in *Sterling Sugars*, 261 NLRB 472 (1982), we shall require the Respondent to expunge from its records any reference to employee Dixon's unlawful discharge. We shall also require the Respondent to notify Dixon in writing of such expunction and to inform him that the Respondent's unlawful conduct will not be used as a basis for future personnel actions concerning him.

(g) Reprimanding and admonishing employees for engaging in union organizing activities in the employees' cafeteria, the restrooms, or on company time.

(h) Staring at an employee for long periods of time following an angry reprimand to said employee for engaging in lawful organizing activities, thereby creating the impression that said activities are under surveillance by us.

(i) Creating the impression that employees' organizing efforts would be futile.

(j) Implying that nonunion employees would not be laid off if employees selected the Union as their representative.

WE WILL NOT discharge or otherwise discriminate against our employees because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

WE WILL offer Doug Dixon immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify him that we have removed from his files any reference to his discharge and that the discharge will not be used against him in any way.

All our employees are free to become, remain, or refuse to become or remain members of Local 741, Laborers International Union of North America, or Local 303, Graphic Arts International Union, AFL-CIO-CLC, or any other labor organization.

PECK, INCORPORATED

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. Upon a charge of unfair labor practices filed in Case 25-CA-13476 on April 24, 1981, by Local 741, Laborers International Union of North America, herein called Local 741, and a charge of unfair labor practices filed in Case 25-CA-13787 by Local 303, Graphic Arts International Union, AFL-CIO-CLC, herein called Local 303, against Peck, Incorporated, herein called the Respondent, individual complaints were issued by the Regional Director for Region 25 in Case 25-CA-13476 on May 29, 1981, and an amendment to said complaint on June 16, 1981. A complaint and an order consolidating complaints in Cases 25-CA-13476 and 25-CA-13787 was issued on September 11, 1981, and an amended consolidated complaint on November 19, 1981.

The consolidated complaint as amended alleges that the Respondent interrogated employees regarding their union membership, activities, and sympathies; that the Respondent created the impression among its employees that their union activities were under surveillance by the Respondent; that the Respondent promised its employees fringe benefits in order to encourage its employees to reject the Union as their exclusive representatives; that the Respondent removed its employees' notices from the bulletin board in order to discourage them from supporting or assisting the Union; that the Respondent required its employees to date, sign, and secure clearance from it prior to posting notices on the bulletin board, in order to discourage their support of the Union; that the Respondent issued unwarranted reprimands to employees in order to discourage them from engaging in union activities; that the Respondent, by verbal announcement, promulgated a rule prohibiting solicitation on company time or in its restrooms and cafeteria; that the Respondent threatened employees with discharges if they supported the Union; that the Respondent informed employees that, in the event of a layoff, nonunion employees would not be laid off; that the Respondent advised its employees to refrain from speaking to agents of the National Labor Relations Board; and that the Respondent warned its employees in writing that it would be dangerous to join, form, or assist the Union in any way, all in violation of Section 8(a)(1) of the Act; and that the Respondent also discharged one employee for concertedly complaining about wages, hours, and working conditions, and discharged another employee because he joined, supported, or assisted the Union, or because the Respondent believed he joined, supported, or assisted the Union, both in violation of Section 8(a)(3) of the Act.

The Respondent timely filed answers to the consolidated and amended consolidated complaint on June 2 and 13, 1981, September 15, 1981, and November 24, 1981, respectively, denying that the Respondent has engaged in any unfair labor practices as alleged in the consolidated complaint, as amended.

The hearing in the above matter was held before me in Bloomington, Indiana, on December 7, 8, and 9, 1981. Briefs have been received from counsel for the General Counsel and counsel for the Respondent, respectively, which have been carefully considered.

On the entire record in this case and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein Respondent Peck, Incorporated, is and has been a corporation duly organized under and existing by virtue of the laws of the State of Indiana. At all times material herein, the Respondent has maintained its principal office and place of business at Bloomington, Indiana, herein called the facility, where it is engaged in the light manufacturing, and the assembly of paper specialty products.

In the course and conduct of its business operations during the fiscal year ending March 31, 1981, the Respondent sold and shipped from its Bloomington, Indiana facility products, goods, and materials valued in excess of $50,000 directly to points located outside the State of Indiana. During the same period, the Respondent in the course and conduct of its business operations purchased and received at its Bloomington, Indiana facility products, goods, and materials valued in excess of $50,000 directly from points located outside the State of Indiana.

The complaint alleges, the amended answer admits, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The complaint alleges, the parties stipulated, and I find that Local 741, Laborers International Union of North America and Local 303, Graphic Arts International Union, AFL-CIO-CLC, are, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

The Respondent is a manufacturer of "To and From" tags for Christmas, and decorations for Halloween, Christmas, Valentine's Day, St. Patrick's Day, Easter, as well as a line of bulletin board aids distributed through school supply houses and teacher stores for grades kindergarten through six.

At all times material herein the following named persons occupied the positions set opposite their respective names, and were supervisors of the Respondent within the meaning of Section 2(11) of the Act, and agents of the Respondent within the meaning of Section 2(13) of the Act:

Leo Flander	President
Robert Lemke	Vice President
John W. Peck	Vice President
Marlene K. Watts	Personnel Director
Joyce Scalze	Supervisor
Jerry Ajer	Manager
Tim Adams	Supervisor
Chuck Ward	Supervisor of Packaging

During the first 8 or 9 months of 1981, the Respondent had in its employ approximately 120 persons. Throughout that period the Respondent's president, Flander, tried to tour his plant once a day for human relations purposes, to enable him to know the employees and to observe production. His tours were from 20 minutes to 2 hours in duration. One phase of the manufacturing process at the Respondent included a light assembly line on which workers performed a job called "plucking." This operation involved a worker standing by the conveyor belt and using his or her middle finger and thumb to pluck out the perforated tabs, in a stack of perforated cards to be placed on the assembly line in tempo with a blinking light at the other end, which served as the time counter.

The Respondent operated the same type of plant in Minnesota before moving to Bloomington. A few supervisory personnel and one employee came from Minnesota and commenced preparation for operation of the Bloomington plant in about May or June 1980. The Respondent and its processing facilities moved into its new plant in November 1980, during which time it was interviewing applicants for employment. The plant finally opened for production in January 1981.[1]

B. *The Organizing Activities of Respondent's Employees and Respondent's Reactions Thereto*

Gayle Grissom has been in the Respondent's employ from February 9, 1981, to the present time. On March 2, 1981, she signed a union authorization card (G.C. Exh. 9) for Local 741, attended an organizing meeting on March 3, and thereafter distributed literature (G.C. Exh. 8) and talked to fellow employees on behalf of Local 741 in the cafeteria and restrooms of the plant.

Barbara May has been in the Respondent's employ from February 9, 1981, to the present time, except for an interruption of approximately 1 month's duration. She signed a union authorization card on March 5, 1981, and distributed literature in the cafeteria, restrooms, and outside the plant on behalf of Local 741. On March 3 or 4, 1981, *Sandra Bartlett* received a union authorization card for Local 741 from a fellow employee in the restroom. She immediately signed and returned the card to the same employee.

Sandra Bartlett was employed by the Respondent on January 19, 1981, as a temporary employee. On March 2, she received her evaluation from Supervisor Joyce Scalze, which described her as having an improved attitude, fine quality and quantity of work performance, and the potential to be an excellent employee. She was also granted a $20 "merit increase" and permanent work status.

Tracy Lamb and Sandra Bartlett were quite friendly prior to Lamb bcoming a group leader on February 9, when their friendship ceased. Bartlett distributed union literature in the plant on March 3 or 4. While working on the line on March 4, Bartlett called to group leader Tracy Lamb and told her to ignore the employees yelling at her about the assembly line moving too rapidly, because they knew it was not her fault. This was not an uncommon complaint by employees. Lamb started shouting and told Bartlett "if you do not like it, you can get the hell out." Lamb walked away and the employees went to lunch.

However, when the employees returned from lunch, Bartlett was rotated to the job of transferring. Lamb testified that she walked over to Bartlett and advised her that she was not performing her job correctly. Bartlett responded, "You're doing a piss poor job yourself." Lamb said she then told Bartlett, "If you did not like it you can get the hell out." Lamb thereupon reported the incident to Supervisor Joyce Scalze, and later Scalze came to her and took her to the office where Kay Watts,

[1] The facts set forth above are undisputed and are not in conflict in the record.

Bartlett, and Manager Jerry Ajer were present. Watts asked Lamb what happened, and Lamb told her version of the story. Watts then asked Bartlett several times to tell her side of the story but Bartlett would only say she needed the job and requested another chance. Watts said she advised Bartlett the Respondent could not keep her if she did not give an explanation for the incident on the line. When Bartlett did not respond, Watts terminated her employment. Bartlett was the first employee ever discharged by the Respondent at its Bloomington, Indiana facility.

Bartlett further testified that, when she reported to the office, present were Kay Watts, Plant Manager Jerry Ajer, Tracy Lamb, Supervisor Joyce Scalze, and herself. Watts advised her that she did not need her kind of people in the plant; that Bartlett tended to upset the people on the line and made them hate the job; and that all she did was complain. Bartlett asked Watts for another chance because she needed the job but Watts said, "no way, you will be happier elsewhere."

Bartlett testified that she and other employees frequently complained to group leaders and supervisors about employees sustaining multiple paper-edge cuts on their hands from performing the plucking operation. In this regard, Bartlett's testimony is consistent with the testimony of Barbara May and Gayle Grissom, which is undisputed and therefore credited. However, none of the other complaining employees were discharged.

Director Watts testified that she discharged Bartlett because her altercation with group leader Tracy Lamb resulted in "disruption of total production," and because Bartlett refused to give her an explanation for her conduct on the line. However, Production Manager Jerry Ajer, who was a part of the conference in which the decision was made to discharge Bartlett, testified that Bartlett was discharged only for telling Lamb she was doing a "piss-poor job."[2]

The uncontroverted evidence established that, on the same afternoon (March 4), employee Lee Ann Walek yelled at her group leader and refused to follow instructions from the latter about the work. Walek was summoned to Watts' office, charged with insubordination, and given a verbal warning which was not included in her personnel file. Although Walek told Watts group leader Lamb misunderstood her comment ("If you can do a better job, come over here and do it yourself"), she said she meant for Lamb to come over and show her how to to do it. Watts told Walek not to yell across the assembly line where her comments could be misunderstood. Thereafter, Walek remained in the office and told Watts that she had heard union literature was being distributed in the plant. Although Watts and Walek denied that Watts asked her or that she voluntarily told Watts which employees were responsible for the union literature distribution, I do not credit their testimony in this regard because it is inconsistent with what later happened, as well as the tenor of all the credited evidence regarding Respondent's antiunion attitude and conduct herein discussed, infra.

The above essentially uncontroverted and credited evidence raises the question as to whether the Respondent's discharge of Bartlett was motivated by Bartlett's and other employees' complaints about paper cuts substained on the hands from performing the plucking operation, and/or complaints about the speed of the assembly line; or for the above reasons advanced by Watts in her testimony as credited herein.

Although it is clearly established by the evidence that the Respondent was opposed to unionization of its Bloomington facility, and that Sandra Bartlett signed a union authorization card in the restroom on March 3 or 4, the evidence fails to demonstrate that the Respondent had any knowledge of such activity or Bartlett's involvement therein on and prior to the afternoon of March 4. The Respondent did receive knowledge on March 4 that Bartlett complained to group leader Tracy Lamb about the speed of the assembly line. However, I am not persuaded that the Respondent's knowledge of this complaint (which was a common complaint from employees) alone provides sufficient evidence of an unlawful motive for the Respondent's discharge of Bartlett under the circumstances herein.

While it is readily conceded that Bartlett's complaint about the speed of the assembly line was uttered on behalf of herself and other employees which constituted protected concerted activity, it is particularly noted that neither Bartlett nor any other employee was called to the office and questioned about such complaint. In fact the evidence shows the employees went to lunch and, on their return, Bartlett was in her turn rotated to the transferring opertion. It was during this operation that group leader Lamb informed Bartlett that she was not performing the operation correctly. Bartlett's response was to the effect that "you're doing a piss poor job yourself." It is not shown that Bartlett expressed a willingness to

[2] Based on the demeanor of witnesses Bartlett and Watts, and on other credited evidence, both testimonial and circumstantial, I credit and discredit certain portions of the testimony of both witnesses in reference to Watts' reasons for Bartlett's discharge during the discharge meeting on March 4 as follows: I credit Bartlett's version that Watts told her she did not need her kind of people in the plant; and that Bartlett tended to upset the people on the line and made them hate the job, because when Bartlett first yelled at Lamb about the speed of the assembly line, she did provoke an angry and loud response from Lamb to the effect that, "if you don't like it you can get the hell out." Likewise, Bartlett's statement during the second incident to Lamb that she was doing a "piss poor job" herself, could very well have been the basis for Watts telling Bartlett she did not need her kind of people in the job, and that she tended to upset people on the line and made them hate the job. On the other hand, I credit Watts' testimony that she discharged Bartlett because of her altercation with group leader Lamb and because Bartlett refused to explain her version of the incident. I do not credit Watts' testimony that Bartlett's remarks to Lamb disrupted total production because the Respondent did not introduce any evidence to establish even a negligible interruption in production, if that much. Although Director Watts might have told Bartlett all she did was complain, it is possible Watts construed Bartlett's complaints about the speed of the assembly line as a complaint, and it is possible she might have construed Bartlett's "piss poor" remark to Lamb as a complaint by Bartlett. Hence, even if I were to credit Bartlett's testimony, which I do not, that Watts told her all she did was complain, this statement by Watts would not be interpreted by me as an objection by Watts to Bartlett's complaint about the speed of the line, since other employees also complained about the speed of the line. These conclusions are further supported by the fact that the evidence of record does not show that Watts knew that Bartlett was engaged in any form of union or concerted activity on and prior to the discharge of Bartlett.

learn how, or that she thereafter performed the job the way Lamb wanted her to peform it. Bartlett was thereupon called to the office of Personnel Director Watts, and asked several times for her version of the latter incident. When Bartlett failed to give a responsive answer, she was discharged by Watts.

The above conclusion is further supported when it is noted that Bartlett did not deny Lamb's version but in a sense, by telling Director Watts she needed the job and asking her to please give her another chance, conceded that Bartlett was responsible for the second March 4 incident.

It is not known whether Watts would have terminated Bartlett if she had given her version of the incident, but it is clear that Bartlett first rebuffed the instructions of group leader Lamb with an intemperate ("piss poor") remark, and thereafter failed to cooperate with management's investigation of the incident. It is also observed that there was a prior breach in the personal relations of Lamb and Bartlett which would have contributed to the latter incident on March 4. Although Walek told Watts about union literature in the plant on the afternoon of March 4, it is not shown that this occurred before the discharge of Bartlett. In fact it appears from the evidence that it occurred subsequent to her discharge. Moreover, when Bartlett contacted the Respondent several weeks after her discharge and requested to be reinstated to her job, and voluntarily gave an explanation for her remarks on March 4, the Respondent reemployed her immediately. Under these circumstances, I am persuaded that the General Counsel's evidence fails to establish that the Respondent's discharge of Bartlett was motivated by her union or her protected concerted activity.

Additionally, since the evidence fails to demonstrate that the Respondent discharged Bartlett because of her union or concerted activity, it is not material why the Respondent discharged her. As the court held in *NLRB v. Garner Tool & Mfg., Inc.*, 493 F.2d 263, 268 (8th Cir. 1974), an employer may discharge an employee for a good reason, a bad reason, or no reason at all, as long as he is not motivated by unlawful considerations.

Although Bartlett's earlier complaint on March 4 that the assembly line was operating too rapidly might have constituted limited protected concerted activity, I not only find that such activity was the motivating cause of her discharge, but that it was insufficient to insulate her from her subsequent insubordinate conduct in response to instructions given her by her group leader. See *St. Mary's Infant Home*, 258 NLRB 1024 (1981), where the Board upheld the administrative law judge as follows:

> I conclude on the basis of her testimony that the discharge of Johnson took place without knowledge of her union activity, and was prompted solely by an extended period of absenteeism which took place against a background of recent insubordination toward a supervisor. Accordingly the limited union activity of Johnson is found to have failed to contribute to the reasons for her termination, and the 8(a)(3) and (1) allegation in her complaint shall be dismissed. [258 NLRB at 1036.]

Although Watts discharged Bartlett without having previously issued warnings to her or complying with a progressive discipline procedure, this fact would appear to be immaterial since the evidence does not show that the discharge was motivated by Bartlett's union or protected concerted activity. Consequently, I conclude and find that the Respondent's discharge of Bartlett was not in violation of the Act.

Approximately 1 month after her discharge, Bartlett contacted Kay Watts and requested to be reinstated to her job. Upon consulting with other members of management, Watts told Bartlett to come in and the Respondent rehired her on April 6. After starting work, Bartlett went to the office to obtain some insurance forms for hospitalization. She told Watts that she was asked to speak with a representative from the National Labor Realtions Board and she did not know what to do about it. Bartlett said Watts told her not to talk to the Board representative and everything would be all right. However, Watts denied that she told Bartlett not to talk to the Board agent but, instead, told her that it was all right to talk to him, there was nothing to worry about.[3]

C. *Respondent's Campaign in Opposition to the Union*

The undisputed evidence established that the Respondent tries to have a meeting with its employees once a month. Respondent Personnel Director Kay Watts generally conducts those meetings. The evidence established herein that in the late afternoon on March 4, 1981, Personnel Director Kay Watts learned that union literature was in the plant. She testified she so informed President Eugene Flander who acknowledged he first learned through Watts and employee Lee Ann Walek on March 5 that union cards were being distributed in the plant. He said he was concerned that the employees felt they needed a union at this time. He thereupon consulted with his attorney, counsel herein. Flander immediately authorized Director Watts to have a letter (G.C. Exh. 3) retyped and distributed to the employees with their checks on that afternoon (March 5, 1981). The letter (G.C. Exh. 3) read as follows:

> It has come to our attention that you may be asked to sign a union card.
>
> What does it really mean to sign a union card?

[3] As I observed the demeanor of both witnesses as they testified I was persuaded that Bartlett was telling the truth and Watts was not. Unlike midday March, by this time in April the evidence clearly shows that the Respondent, Watts, and Flander had definite knowledge of the union activity of specific employees. Additionally, I noted that Bartlett's version of the conversation was consistent with the Respondent's antiunion position and conduct as the evidence clearly establiahes in the record, supra and infra. I was further persuaded that Watts was not telling the truth when she stated that she told Bartlett to talk with the Board representative and assured Bartlett everything would be all right. Such advice by Watts is inconsistent with the evidence of her prior and subsequent conduct and attitude towards the Union and the employees who supported it, further herein discussed, infra. Although these facts were not alleged in the complaint, they were nevertheless litigated in this proceeding. I therefore conclude that Watts' advice to Bartlett violated Sec. 8(a)(1) of the Act.

> The card usually is not *just* a form that the union can use to get an election, although this is what you may have been told.
>
> The card could be an "authorization card" by which you, the signer, may give the union the right to represent you in *all* matters concerning your job. Such cards can be used by a union to gain representation *without* an election.
>
> Most dangerous is the fact that the union card could be a "membership" card.
>
> By signing such a "membership" card you become a member of that union with all duties and obligations, legally enforceable. You may then be subject to such things as union dues, fees, fines and penalties.
>
> It is not wise to join any organization without fully investigating why they want you to join. You should have a full and complete understanding of what you are giving up and what it will cost you personally.

In mid-or late March 1981, President Flander admitted the Respondent held a meeting with the employees during which he read the above "Know Your Rights" letter (G.C. Exh. 3) to employees. He also read a letter (G.C. Exh. 6) dated March 30, 1981, to the employees, which explained that employees also had a right not to join the Union, and it emphasized information which constituted a campaign on behalf of the Employer to remain nonunion. President Flander also held up and read a union authorization card for Local 741, emphasizing that he wanted the employees to know exactly what they were signing.

According to the testimony of *Gayle Grissom*, President Flander also told the employees they may be giving up their right to vote in an election, in fact there may not even be an election if the Union gets enough cards signed; that employees would be subject to fines, dues, initiation fees, and *in a very loud voice*, he said, "And we're going to know who signed these cards, so that we can verify signatures that it was employees for an election"; that "if you don't like things here, there are 3,000 applications on file, right Kay?" and Kay Watts nodded her head in the affirmative. Employee *Barbara May* corroborated Grissom's testimonial account of what President Flander said in the meeting, adding that, when President Flander asked Kay to confirm that the Respondent had 3000 applications on hand, Kay Watts nodded her head in the affirmative and said, "*If you're not happy here, you know what you can do.*" However, Flander and Watts denied that Flander made the above reported statements, and Watts denied that she made the above-described gesture and quoted comment about knowing who signed cards and suggesting or telling employees if they did not like it there they could resign.

Barbara May further testified and corroborated Grissom's testimony about the April meeting, to the effect that Flander said the Respondent gave its employees in Minnesota certain benefits which he intended to give to the Bloomington employees, that included a turkey at Thanksgiving, a ham at Christmas, and a Christmas party on the last half of the workday of December 18. He also stated that he was giong to extend the break from 10 to 15 minutes and that there would be a bell or buzzer to specify the extra 5 minutes for traveling time to enable workers to get back to their work stations; and that the Respondent was going to set up a store where employees could purchase its products at half price, and that notices for the employees' bulletin board should be dated, signed, and okayed by the front office. However, Flander and Kay Watts denied he said the notices had to be okayed by the front office. President Flander acknowledged he told the employees about Thanksgiving and Christmas gifts and the Christmas party. However, he explained that break period was extended simply to give the employees enough time to get to and from the restrooms and back to their work stations on time. He denied he said products of the Company would be sold at half price, but at regular prices.[4]

D. *Respondent's Interrogation—Impression of Surveillance of Employees' and Other Intimidating Conduct Towards Them*

Grissom further testified that about 10 o'clock in mid-April 1981, Personnel Director Kay Watts, accompanied by Supervisor Joyce Scalze, approached her and Watts handed her a union meeting notice which Grissom had posted on the company bulletin board by the timeclock an hour earlier. Watts said, "Gayle, the bulletin board across from the timeclock is for personnel use only," "we will be erecting one in the lounge for employee notices." As Watts and Scalze proceeded to walk away, Grissom called them and explained to Watts that she had received a call from the union representative and he asked her to help him; that she felt she had not done enough to help the union organizing effort and she posted the notice on the board at his request. At that time *Watts asked her why did she feel the employees needed a union; that the Company would rather deal with the employees than the Union.* Grissom explained to Watts that she could not talk to Watts, Scalze, or President Flander because Flander scared her and he scared everybody. She also told Watts about complaints of herself and other employees on the line about the work being so hard for such little pay; and that she has never worked so hard for so little pay and been treated so badly.

Grissom undisputedly testified that she posted a notice on the bulletin board for the sale of her husband's motorcylce when she first came to work in February, on

[4] I credit the testimonial accounts of Grissom, May, Flander, and Watts, as to what President Flander said in the March and April meetings, except Flander's and Watts' denial that Flander in effect told employees the Respondent would know who signed union cards so it could verify signatures of an election; that if employees did not like things at the plant, there were 3000 applications on file; that employees would be permitted to purchase company products at half price; that personal notices to be posted on the bulletin board for the benefit of employees must be dated, signed, and cleared by the front office; and that Director Watts told employees "if you're not happy here, you know what you can do." I do not credit their mere denials because I was personally persuaded by their demeanor that they were not telling the truth. However, I was persuaded by the demeanor as well as the mutually corroborated detailed testimony of Grissom and May, in conjunction with the credited evidence of record as a whole, that their versions were truthful and Flander's and Watts' denials were not.

which she wrote only her telephone number. About a week before she posted the union notice, she posted a notice of a garage sale for her friend, both of which notices were in Watts' hand at the time she approached her. Grissom told Watts the notices about the motorcycle sale and the garage sale were hers also, and Watts handed them to her. She attended the company-called meeting a few days later (April 16, 1981) wherein President Flander conducted the meeting during which he told employees about the Christmas party, turkeys, etc., as Barbara May also testified. May added that Flander also told the employees that notices for the employees' bulletin board should be dated, signed, and okayed by the front office before posting.

Based on the foregoing credited evidence, I conclude and find that the Respondent (President Flander) told employees in a company-called meeting that the Respondent was going to know who signed cards for the Union, so that it could verify signatures for the election. It is well-established Board law that such a pronouncement by an employer during an organizing campaign of employees creates the impression that the union activity of employees is under surveillance by the employer. Consequently, such conduct by the Respondent is in violation of Section 8(a)(1) of the Act. *Crown Cork & Seal Co.*, 253 NLRB 310, 314 (1980); *Lundy Packing Co.*, 223 NLRB 139 (1976).

I further conclude and find that the Respondent (President Flander) told employees that, if they did not like working for the Respondent, there were 3000 applications on file; and that Personnel Director Watts told employees "if you are unhappy here, you know what you can do." Since these statements by the Respondent immediately followed the above found unlawful statements by the Respondent, they must be construed in the context in which they were uttered. Thus, the first statements having given employees the impression their union activities were under surveillance, the Respondent's reference to 3000 applications on file and telling employees if they were unhappy in its employ they knew what they could do, may be, and in all probability was, reasonably interpreted by the employees that the Respondent was threatening them with replacement if they signed union cards or did not allow the Respondent to remain nonunion. Under these circumstances, the Respondent's remarks to the employees exceeded the bounds of free speech, and had a coercive and restraining effect upon the exercise of employees' Section 7 rights, in violation of Section 8(a)(1) of the Act. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 600 (1969).

President Flander testified he informed the employees about free turkeys, free hams, a Christmas party, and the extended break period because the Respondent was just implementing the same fringe benefits for the Bloomington employees that it had previously provided to its Minnesota employees. However, the timing of Flander's announcement in this regard puts credibility in question. The Respondent's Bloomington facility has been in operation since January 1981, and the evidence does not show that the Respondent made any effort to provide employees with such fringe benefits prior to its full knowledge of the employees' organizing campaign in early March 1981. More specifically, it was only less than 2 weeks after the Respondent acknowledged it learned of the employees' organizing campaign, and while the Respondent was engaged in its own campaign in opposition to the employees' campaign, that it announced the aforedescribed fringe benefits. Under these circumstances, the Respondent's anouncement can only be construed as promises of benefits to dissuade its employees from unionizing its Bloomington facility. As such, the promises were designed to discourage the employees from unionizing the plant and therefore constituted a restraint upon and coercion against employees' Section 7 right to organize, in violation of Section 8(a)(1) of the Act. *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964). In holding that such announcement was unlawful, the Court said:

> The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

Also see *K & E Bus Lines*, 255 NLRB 1022, 1036 (1981).

It is well established by the undisputed evidence that the Respondent had no prohibition against employees posting notices to employees on the Company's bulletin board prior to March. In fact, the evidence shows that employees had been posting personal notices on the Company's bulletin board since early February 1981. Although Director Watts testified she was in charge of the bulletin board and was responsible for notices posted and removed therefrom, she denied she had seen the two notices (for sale of a motorcycle and for a garage sale), which she removed from the board with the union notice and handed to Grissom on or about April 14. I do not credit Watts' denial in this regard however, because I find it inconceivable that she took care of the bulletin board since the Respondent commenced business operations in January, and did not see employee notices posted there prior to the very day on which Grissom's notice about the union meeting was posted. Since the Respondent's antiunion position had already been well established at the time Watts removed the notices from the bulletin board, it is clear that personal notices to employees were not significant to the Company until the notice about the Union was posted.

Moreover, assuming that Watts had not in fact seen personal notices to employees prior to the posting of Grissom's union notice, it appears strange that Watts could not have left the notices on the board until 2 days later, when a bulletin board was to be erected for employees in the cafeteria. By immediately removing the notices after the posting of the union notice, and after Watts ascertained who posted the *union notice* and personally delivered it to Grissom, the union animus of the Respondent, as well as its intention to let organizing employees know the Respondent knew who they were, is clearly revealed. *K-Mart Corp.*, 255 NLRB 922, 925 (1981).

Grissom acknowledged to Watts that she posted the union notice. When Watts asked her why did she feel the employees needed a union, because the Company preferred dealing with employees than with a union, such question by Watts (a high ranking official), in the setting previously described, constituted coercive interrogation of employees in violation of Section 8(a)(1) of the Act.

Additionally, by telling employees notices to employees to be posted on the bulletin board had to be signed, dated, and okayed by the Respondent prior to posting, without demonstrating a legitimate business reason therefor, the Respondent's motive to further discourage employees from engaging in union activity is clearly revealed. Such conduct by the Respondent had a coercive and restraining effect on employees' Section 7 rights, in violation of Section 8(a)(1) of the Act. *Liberty House Nursing Home*, 236 NLRB 456, 461 (1978); and *Palomar Transport*, 256 NLRB 1176, 1177-78 (1981).

President Flander undisputedly testified that he transmitted a copy of its memorandum (G.C. Exh. 3) to employees and read the contents thereof to them during his meeting with employees. Among other things, the memo warned employees that union membership could be "most dangerous" "you may then be subject to such things as union dues, fees, fines and penalties," "if you hire them [the Union], you will probably have to pay for their services in the form of monthly dues, initiation fees, and other special assistance, including 'strike' funds and fines." In General Counsel's Exhibit 6, the Respondent refers to the Union as "pushers." Counsel for the General Counsel contends that the Respondent exceeded the bounds of free speech by emphasizing the above-described detrimental effects of unionization, and that such comments were unlawful.

However, I do not agree with counsel for the General Counsel that the above-described comments were "derogatory" or necessarily described detrimental effects of unionization. The Respondent was careful to say employees *may be* subject to such financial obligations should they select a union, and certainly they may very well be so subjected. At most, the Respondent's remarks, that union membership *could* be "most dangerous" and its characterization of labor organizations as "pushers," may more properly constitute evidence of union animus, rather than "derogatory" or detrimental effects of unionization. The General Counsel did not cite any authority in support of a stronger and unlawful meaning. The Respondent must be allowed to exercise its right of free speech, even if it "puffs" a little in doing so. In short, I find that the above remarks were not of a coercive and restraining character, sufficient to constitute a violation of Section 8(a)(1) of the Act.

E. *Other Restraining and Coercive Conduct by the Respondent*

On April 23, 1981, while Grissom was performing what is called the plucking operation on the assembly line, President Flander, accompanied by Director Watts, approached Grissom and said in a *loud voice, "Gayle we've had complaints that you've been harassing people, and making threats about the Union."* Grissom continued to testify as follows:

> And I said, I have done nothing illegal, and he said, well, we've got three people that say you have been harassing and making threats; and I was getting very nervous.
>
> And, he said, *we know your rights as far as organizing, but not in the bathrooms, not in the cafeteria, and not on company time.*
>
> When someone tells you no, they mean no, dammit, back off. You've had your warning. And when he pointed his finger at me, I—I just—well, I was just so nervous, it was terrible.
>
> I was also told—he told me, that this would not be on my record.

As Flander and Watts proceeded to walk away, Grissom said she called Watts and Watts refused to turn around.

After leaving Grissom's work station, President Flander and Director Watts approached Barbara May at her work station. Flander appearing angry said, "*I've had complaints about your harassing and threatening people in the packaging department about union activity*" "I asked you in one of the meetings *to keep it clean, and keep it out of the production area, and you have chosen not to*" "I cannot have this. Now when people tell you no, they mean no," "*when people tell you no, damn you, they mean no.*" He walked away but turned and came back and shook his finger at May and said, "No dammit, I mean it." "*You have had your warnings.*" "This *warning will not go in your record.*" Watts repeated to him, "This warning will not go in your record." The incident with *May* occurred in the presence of fellow employees Linda Long, Gloria May, and Dana. Linda Long told Flander, "she has rights, you should not be out here on the line yelling at her like this" "she has a right to know who these people are that said she has committed these wrongs." Flander looked at Linda Long, pointed his finger, and said, "this is no damn Court of law, Linda." Linda Long corroborated May's testimony about the above incident.

On the next day, May said she saw President Flander sitting near her, staring at her for about 15 to 20 minutes, as she worked. On another occasion during the day, she saw him staring at her for approximately 15 minutes.[5]

[5] The testimonial accounts of Grissom and May are essentially uncontroverted. However, to the extent that they may be at variance with the Respondent's (Flander and Watts) testimony, I nevertheless credit theirs because I was persuaded by their demeanor and the demeanor of another corroborating witness, Linda Long, in part, that their versions were true and the Respondent's was not. Although President Flander denied he stared at May for long periods on two occasions following his intimidating warnings to her on the day before, I do not credit his denial because I was persuaded not only by his demeanor, but also by the entire record evidence of his union animus and unlawful conduct, that he was not testifying truthfully in this regard. The timing of his staring is too probative in character to attribute to coincidence. Common experience discredits it. I was fully persuaded by the demeanor of Grissom, and the overwhelming corroborated and circumstantial evidence of record, that she was a truthful witness even though the General Counsel's objection to the request of counsel for the Respondent to review her affidavit was sustained. Counsel for the General Counsel's objection was sustained because counsel for the Respondent's request to review the affidavit was not made until he had completed approximately three-quarters of his cross-examination of Grissom. Counsel for the General Counsel unrelentingly stood upon his objection in a bench conference, and his objection was erroneously upheld on his and my erroneous misunderstanding that it

Continued

Based on the above credited evidence, I conclude and find that the Respondent (President Flander) angrily accused employees Grissom and May of harassing and threatened employees on company time about joining the Union. Since the Respondent did not produce any probative evidence that either Grissom or May had harassed or threatened any employee about union membership, I do not credit its (Flander's) testimony in this regard. At most, President Flander testified that one or two employees had informed him that they had been threatened or harassed by Grissom and May. Such other individual employees did not testify in this proceeding about statements or conduct by Grissom or May, which constituted harassment or threatening conduct. In the absence of such evidence, President Flander's accusations in this regard are self-serving and therefore discredited. Additionally, Flander's angry reprimand and admonition to Grissom to refrain from engaging in organizing activities in the bathroom, the cafeteria, or on company time; and May to refrain from organizing activities in the production area, or with people in the packaging department, constituted an interference with, a restraint upon, and coercion against the exercise of employees' Section 7 rights, in violation of Section 8(a)(1) of the Act. *Gorman Machine Corp.*, 257 NLRB 51 (1981); *J. P. Stevens & Co.*, 247 NLRB 420 (1980), and *T.R.W. Bearings*, 257 NLRB 442 (1981).

Upon the foregoing credited testimony of Barbara May, I further conclude and find that, on the day following the angry reprimand to May, President Flander on two occasions during the workday stared at May for a period of 15 to 20 minutes each. Such conduct by the Respondent on the day immediately following the angry reprimand certainly could, and must have been intended to, have an intimidating and restraining effect on May. Since the staring was done by such a high ranking official of the Respondent (President Flander), such conduct constituted actual surveillance and/or creating the impression in violation of Section 8(a)(1) of the Act. Cited authority unnecessary.

Counsel for the General Counsel contends upon the undisputed testimony of Grissom and May, which I credit, that by telling the employees during his speech, "that only the skilled employees at the former Minnesota plant were unionized, and the packaging department employees never selected the union to represent them," President Flander conveyed to the employees a message that it would be *futile* to organize because such organizational effort in Minnesota was unsuccessful. In support of his position, counsel for the General COunsel cites *Firmat Mfg. Corp.*, 255 NLRB 1213 (1981). In my view, the above statement alone would not constitute an infraction of 8(a)(1) conduct. However, when such statement is considered in the context and along with the Respondent's other unlawful utterances during the speeches, I find that such remarks do convey a message of futility. As such they had a coercive and restraining effect on employees' organizational desires, in violation of Section 8(a)(1) of the Act.

President Flander admitted during his testimony that, by telling the employees none of the nonunion employees was laid off in Minnesota, he implied that none of the nonunion employees would be laid off in Bloomington. Consequently, such implied remarks constituted a subtle threat that employees who joined the Union would be laid off, in violation of Section 8(a)(1) of the Act.

F. *Other Alleged Unlawful Interrogation by the Respondent*

In its answer, the Respondent admits that Tim Adams was a supervisor within the meaning of the Act, as alleged in paragraph 4 of the consolidated complaint herein. In its posthearing brief to me, the Respondent argues that it also admitted in its answer that Tim Adams was promoted from a group leader to a supervisor on or about March 23. Thereafter, the Respondent did not amend its answer or present any evidence to the contrary. Consequently, since Barbara May testified without dispute that her conversation with Adams occurred in mid-April, I find that Adams was a supervisor within the meaning of the Act. However, as counsel for the Respondent argues in his brief, Adams was a fellow worker with May only a few weeks before he became a lower level supervisor. The conversation with May occurred after May told Adams she was having a bad day and Adams asked her if she would like to talk about it in his office. May accepted the invitation.

May, while crying, told Adams she was depressed about the difficulty of the work, low pay, and little opportunity for advancement. She testified without dispute that their conversation continued as follows:

> And he said, "Well, Barb, did you receive the letter in your paycheck?" And I said, "Yes, I received the letter in my paycheck." *He says, "do you think that that will change things?"*
>
> And I said, "do you mean the letter that was sent around about our union?" I said, "are you asking me about the letter, or about the union?"
>
> And he said, "yes," he says, *"I'd like to know your opinion about the benefits here, and your opinion about the union."*
>
> And I said, "well," I said, "I think Peck has good benefits, I think there needs to be a lot changed," I said, "I like working here, I like my fellow employees, but I just—I do believe that they need to have things changed, and at this time," I said, "I don't think a union would help, I don't think it would help at this time."
>
> But I said, "Tim, I don't know whether I can talk to you about the union, because I don't know whether I can trust you or not. I don't know how you feel about it." And he said, "well Barb," he says, "you can talk to me about anything," and he

was supported by the Board's Rules and Regulations. I felt bound by this erroneously understood and frequently advocated objection in Board proceedings. In the past, when such objections were interposed, I was able to persuade counsel for the General Counsel to relent. I was unable to do so on this occasion and did not have my copy of the rules with me. However, an examination of Secs. 102.118 2(b)(1), 2, and 2(c) of the Rules and Regulations does not support such an objection. In fact the rules further provide that the prior testimony may be stricken, upon motion of opposing party, if the affidavit is not given to the oppposing party for examination.

says, "it's not going to go any farther than this office, it's just between me and you."

And, he said, "you know, what you tell me," he says, "won't go any further than what—between those doors."

And I said, "well, Tim, I don't know whether or not I can really believe that, the way things are around here, and everybody don't know who to trust, people don't know—they can't trust Flanders, they can't trust Kay Watts," I said "you can't trust the group leaders," I said, "everything you say, seems to wind up right back in your face, and people going—you just, you just can't trust people."

And I said, "I don't know if I can trust to talk to you about the union."

And I said, "the wages we're making are like coolie wages, or chink wages, and I think a union in that part would give us job security, would give us more money, would help people keep their jobs, that they wouldn't be afraid anymore."

A close examination of the above testimony clearly describes a conversation between two people who knew each other quite well. May felt comfortable enough to tell Adams how she was affected by the job and Adams apparently felt confortable enough to ask May how she felt about the Union, did she think it would help to improve things. While initially May was a little reluctant to disclose her feelings about the Union, it is clear she wanted to talk to Adams about it. She only wanted to be assured it would remain confidential. While Adams did not specifically assure May against company reprisal, he did assure her it would remain confidential with him, and May accepted his pledge of confidence and discussed her views about the Union. Although the Respondent at this juncture had a history of union animus, Supervisor Tim Adams was a lower level supervisor who knew May as a former coworker only 6 weeks prior thereto. Adams did not appear to be seeking information to pass on to the Respondent so that it could take action against May. The conversation was informal and May's responses were truthful. While May was initially uneasy about disclosing her views to Adams, there is no evidence that Adams' questions inspired fear in May. This is especially true after May expressed her interest in confidentiality and Adams so assured her. Under these circumstances, I am persuaded that such interrogation was not coercive and unlawful. *Bourne Co. v. NLRB*, 332 F.2d 47 (2d Cir. 1964), enfg. 144 NLRB 805 (1963).

President Flander further testified that on April 23, after Bernice Canada told himself, Supervisors Kay Watts, Joyce Scalze, and group leader Tim Adams, that she was in the ladies restroom in one of the stalls when somebody reached under the door and stuffed some union literature into her purse; and that when she was leaving the restroom some person in the restroom said, "watch your car." Canada said she believed the person was Gayle Grissom or Barbara May. Flander said that is when he decided to approach Grissom and May. He said he told Grissom that "we had reports of intimidation and harassment, that I respected her rights under the labor law, but these rights did not include the right to harass or intimidate fellow employees; and that if these types of things transpired, we wished that they would be discontinued immediately." Flander denied he said anything else. He said he told May the same thing. However, he admitted Linda Long was present when he spoke with May and Long said she thought it was unfair he did not tell Barbara May who complained. He told Long he did not think disclosure of the person was necessary. He denied he told May or any other employee that union activity in the bathrooms, cafeteria, or on company time was forbidden. He also denied he engaged in surveillance on April 24.[7]

With respect to what he told the employees in the July meeting after the notice had been posted on the bulletin board announcing a union election to be held on August 14, President Flander testified as follows:

> I told them that the Graphic Arts Union then had filed a petition for an election; that Local 741, the International Laborers' Union had intervened with the NLRB regarding that petition. That occupied with the Unfair Labor Practice Charges filed by the International Laborers' Union effectively blocked the election; that the tentative date for the hearing of those charges was set December 7, 1981, and unless there was some change that there would not be an election until sometime after that day.

With respect to questions regarding the eligibility of temporary employees to vote, Flander testified as follows:

> I told them that we had a lot of questions regarding whether they would have to sign cards or whether, if there was an election, they would be able to vote and that type of thing. I told them that to the best of our knowledge and after checking with counsel, that it was—there was very little chance that temporary employees would be certified to vote in an election; that they really wouldn't be involved in an election of this type.

Flanders said another rumor which circulated the plant was that the Respondent left Minnesota because it was unionized. He said in response to this rumor he told the employees that Minnesota was unionized by Graphic Arts but only 8 people were members while 120 production employees were not.

G. *The Respondent's Discharge of Doug Dixon*

Doug Dixon, 21-year-old student at Indiana University was referred to the Respondent by the university, and was employed by the Respondent from June 30, 1981, to July 17, 1981. He rotated on the plucking operation as did other employees but testified he was never told there was a production quota. On July 14, 1981, John Orr, an affiliate of Graphic Arts United, gave Dixon a card to sign. Dixon signed it and stuck it in his pocket. He attended the company-called meeting of employees 2 days

[7] I was not persuaded by the demeanor nor the testimony of Flander that he was telling the truth. I was persuaded by the corroborated versions of Grissom and May, however. Consequently, I do not credit Flander's above denials for the reasons hereinbefore discussed.

later, on July 16, when President Flander told employees he had noticed increasing union activity in the plant; that there was a union in the Minnesota *plant but it did not do much for the employees there*; that what the Union would *do is just take a big chunk out of the paycheck of employees, it would not give them many benefits*; and that he did not understand why there was union activity in the shop. Flanders then entertained questions from the employees and received a few regarding vandalism on the parking lot and another about benefits. Dixon then asked President Flander did he know what exploitation was, and he testified that his remaining remarks during the meeting were as follows:

> I said I'd never seen it so bad as it is here in this factory. I said I'd seen ladies out on the factory line, coming off the line with bloody lines, and I said, Marilyn Bridges—I think the last name's Bridges—It's Marilyn Bridges, I think—I said, she had to be taken off the line, because her hands are hurting so bad because of the cuts, and how bad she was bleeding.
>
> . . . .
>
> A. I worked at Whirlpool and I worked at Bootz Manufacturing in Evansville, and both those places had unions, and I never saw anything as bad as it was in this shop, as far as the exploitations go, and was concerned. And—
>
> Q. Did Mr. Flander respond to you?
>
> A. Yes, he said that the cuts were superficial cuts, and I said, well, they sure hurt like real cuts.
>
> And I said—well, when *he said that its probably just because you're a temporary employee*, and then I didn't say anything to that, and he kind of went on to another—you know, try to get another question in before, you know, I could say anything else to him.

On the very next day, July 17, Dixon's group leader, Lola Vennette (Cookie), proceeded to stack bubbles 16 high, instead of 8 high, as usual. He told her that made it difficult to manage and she asked him, "do you want me to go to Chuck," and he said, "yes, I'll talk to Supervisor Chuck Ward." A few minutes later Ward came to him and asked him to come along with him. They went into the office and Kay Watts advised him that he was terminated because he did not pluck fast enough, and he used abusive language to the group leader. Watts asked Dixon to sign the termination slip but he refused because he did not agree with it. Dixon had never received a warning about being a slow plucker and Ward directed him to punch out. Dixon said, during his working tenure with the Respondent, Ward on one occasion told him he was doing a good job sealing. Watts acknowledged that she was not sure which document regarding company rules (R. Exh. 9 and G.C. Exh. 13) she gave to Doug Dixon on or about June 29, 1981.

Kay Watts further testified that group leader Ashley Barrow informed her that on *July 2, 1981*, Barrow informed Doug Dixon that he was missing too many bubbles on the assembly line. Dixon jumped out of his chair, and in a loud manner, called Barrow a "damn liar." On the day prior thereto, Watts testified that she observed Dixon miss seven straight bubbles on the assembly line. On July 17, she said she had a conversation with group leader Chuck Ward, who told her Dixon told Sylvester to slow down the line. On the morning of morning of July 17, Watts testified that she told Teresa Torgison that she had observed Dixon missing bubbles and Torgison said that was not uncommon for Dixon's work. Later that day she met with Production Manager Jerry Ajer and Vice President Bob Lembke and discussed the report she had received about Dixon. They all agreed to terminate Dixon. About 5 o'clock that afternoon, she, in the presence of Ward, advised Dixon that he was being terminated because of his inability to perform the plucking procedure and his insubordination.

Watts acknowledged she prepared a reprimand (R. Exh. 11) but did not show it to Dixon at the time of his discharge, but nevertheless placed it in his personnel file. She testified she did show Dixon his termination notice (R. Exh. 12) but Dixon refused to sign it. Watts further testified she discussed Dixon's termination with President Flander and he agreed to terminate Dixon. On the following Friday, Dixon came into the plant to pick up his check, and yelled to her, "hey, Kay I'll see you in court," and she said, "fine Doug, I'll see you there."

Group leader *Chuck Ward* testified that on July 2, 1981, Ashley Barrow showed him a stack of bubbles with one-fifth of tags missing, all of which he said was missed by Doug Dixon. He told Barrow this was only Dixon's first week and perhaps he should take them back to him and inform him that he was missing. Later that evening Barrow came to him and informed him that he had taken a stack of bubbles and showed Dixon how to process them but Dixon was still missing bubbles. He said he told Dixon that due to all the rejects the tags were not in the bubbles. At that time, Dixon jumped up and called him a "damn liar." Ward said he took Dixon to the office and warned him about such vocal outburst on the line and that he had to improve his speed on plucking. Thereafter, he wrote a report to Kay Watts. Watts asked him why he did not include the "damn liar" statement in his report and have Dixon sign it. *Ward told her because he did not hear the statement* and because this was only a verbal warning. The report was not dated. On July 16, Jan Sylvester told him Dixon had asked her to stop putting bubbles on with the light. On July 17, Ward told Watts that Sylvester told him about Dixon. That evening, Watts along with Manager Ajer advised him that they were going to terminate Dixon. Flander said, although Dixon was terminated on July 17, he did not participate in his termination.[8]

Although Doug Dixon was a new and temporary employee, having been hired June 29 and terminated July 17, 1981, the Respondent treated him as a new employee being trained until July 17. The date July 17 becomes significant here only when it is observed that it is the very day subsequent to July 16, the day on which President Flander met with and explained his curious concern

[8] The above testimony of Dixon, Watts, and Ward is essentially free of conflict and is credited for recitation, but not for the truth as the Respondent contends as reasons for the discharge of Dixon.

to employees about unionization of the plant. Dixon had signed a union authorization card on July 14 and attended the company-called meeting on Thursday, July 16. Although the evidence does not establish that the Respondent knew Dixon was involved in union activity, Dixon nevertheless was perhaps the most vocal and critical employee spokesman at the meeting about working conditions and plant atmosphere. Not only were Dixon's critical remarks about work conditions corroborated by the uncontroverted testimony of Grissom, May, and Long, but his remarks were articulated in strong and what might be considered unapologetic language.

As noted, Dixon asked Flander did he know what exploitation meant, and went on to describe working conditions which were injurious to employees' hands. He said he had never witnessed such hazardous work and lack of concern by an employer in his work experience. Flander told Dixon *that was because he was a temporary employee.* While Flander did not explain the latter remark, it is not incoherent in the context of the discussion they were having. Thus, it may be reasonably inferred from such language by Flander that he was reminding Dixon in the presence of other employees that Dixon may not ever become a permanent employee. No other reason for such a response is apparent. In view of the Respondent's well-established union animus, it is reasonable to conclude that the Respondent could not have appreciated Dixon's very critical remarks in the midst of its expressed concern about employees unionizing the plant and its efforts to avoid it.

On the very next day, July 17, Dixon was subjected to a work experience he had not encountered before. His group leader stacked bubbles twice as high as they are normally stacked, and when Dixon complained about the difficulty to manage the bubbles so stacked, that it posed a handling problem, he was escorted off to the office of Personnel Director Watts, who advised him he was terminated because he could not pluck fast enough, and because he used abusive language towards a group leader. It is particularly noted that the abusive language to which Watts was referring occurred more than 2 weeks before, on July 2, when group leader Barrow informed Dixon he was missing too many bubbles. Dixon jumped out of his chair and, in a loud voice to Barrow, told him he was a "damn liar." Although the incident was reduced to writing without the "damn liar" reply, Dixon was not given a verbal or a written reprimand about the incident.

At the trial herein, Watts testified that on the day prior to the "damn liar" incident, July 1, she observed Dixon miss seven consecutive bubbles on the assembly line. Watts also testified that, on July 17, group leader Chuck Ward told her Dixon told employee Sylvester to slow down the line. Finally, Watts said she told Teresa Torgison that she had observed Dixon missing bubbles on July 17. She said Torgison said that that was not uncommon for Dixon. Assuming that Watts' testimony in this regard is correct, it is readily observed that she did not issue an oral or written warning or reprimand to Dixon after July 2, nor after her observation of Dixon missing bubbles on July 17. In fact, Watts' acute observation of Dixon missing bubbles on July 17 appears to be a questionable coincidence, peculiarly occurring on the very next day after Dixon uttered his sharp criticism to management in the company-called meeting. Consequently, based on the foregoing sequence of the evidence, in light of the well-established union animus and other unlawful conduct of the Respondent herein, I conclude and find that the Respondent's discharge of Dixon was solely motivated by his critically sharp complaints to management during the July 16 meeting.

The fact that the Respondent (Personnel Director Watts) did not issue the warning to Dixon which she produced at the hearing regarding the July 2 incident clearly shows that the Respondent did not view Dixon's conduct at that time (July 2) as significant, and did not issue a warning to him in compliance with its progressive disciplinary procedure. The warning produced at the trial herein had never been shown to Dixon or signed by him and, therefore, is of a self-serving character which I do not credit. It therefore becomes obvious that the Respondent's contention that it discharged Dixon for his remote "damn liar" remark on July 2, on which it took no action, or for his deficient plucking, for which it did not issue him a warning, clearly reveals such contention by the Respondent to be a well-contrived pretext, to conceal its unlawful discharge of Dixon. Since Dixon was discharged for complaining about work conditions, about which other employees also complained, it is clear that he was complaining on behalf of himself and other employees and was therefore engaged in protected concerted activity. Since the Respondent's discharge of Dixon was motivated by his critical complaints in the meeting about work conditions, its discharge of him was discriminatory and in violation of Section 8(a)(1) of the Act.

Since the Respondent has not shown that Doug Dixon would have been discharged in spite of his sharp and critical complaints about working conditions at the plant, *Wright Line*, 251 NLRB 1083 (1980), is not applicable to the facts as found herein.

The complaint herein contained numerous 8(a)(1) allegations, to which the evidence referrable thereto is fragmented throughout the record. I made a diligent effort to integrate the testimonial evidence with the appropriate allegations and make findings with respect thereto. Any allegations for which evidence was not addressed or found in support thereof are hereby dismissed.

Counsel for the General Counsel's unopposed motion to correct the transcript is hereby granted. However, his motion to amend the complaint is rendered unnecessary by the issue raised by his motion having been litigated herein.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices warranting a remedial order, I shall recommend that it cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

It having been found that the Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, by telling employees not to talk with an investigative agent of the National Labor Relations Board; by promising employees benefits in the midst of their organizing campaign; by asking employees why they throught they needed a union and telling them the Respondent would rather deal with them than with a union; by telling employees it would know who signed cards for the Union; by telling employees it had 3000 applications on hand and if they did not like it there, they knew what they could do; by telling employees that employee notices to be posted on the bulletin board had to be signed and okayed by the Respondent before posting; by reprimanding and admonishing employees about engaging in organizing activities in the employees' cafeteria, the restrooms, and on company time; by staring at an employee for long periods of time following an angry reprimand to said employee for engaging in lawful organizing activities; by creating the impression employees' organizing efforts would be futile; by implying to employees that nonunion employees would not be laid off; and by creating the impression that employees' organizing activities were under surveillance by the Respondent, the Respondent violated Section 8(a)(1) of the Act; that by discharging an employee because he complained about working conditions in a company-called meeting, the Respondent violated Section 8(a)(3) and (1) of the Act, the recommended Order will provide that the Respondent make the discharged employee whole for any loss of earnings he may have suffered within the meaning and in accord with the Board's decision in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977),[9] except as specifically modified by the wording of such recommended Order.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that the Respondent cease and desist from or in any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

On the basis of the above findings of fact and on the entire record of this case, I make the following

CONCLUSIONS OF LAW

1. Peck, Incorporated, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 741, Laborers International Union of North America and Local 303, Graphic Arts International Union, AFL-CIO-CLC, are, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

3. By telling employees not to talk with an investigative agent of the National Labor Relations Board, the Respondent has violated Section 8(a)(1) of the Act.

4. By promising employees benefits in the midst of their organizing campaign, the Respondent has violated Section 8(a)(1) of the Act.

5. By asking employees why they thought they needed a union and telling them the Respondent would rather deal with them than a union, the Respondent has violated Section 8(a)(1) of the Act.

6. By telling employees it would know who signed cards for the Union, the Respondent created the impression its employees' organizing activities were under surveillance, in violation of Section 8(a)(1) of the Act.

7. By telling employees the Respondent had 3000 applications on file and if they were not happy there, they knew what they could do, the Respondent has violated Section 8(a)(1) of the Act.

8. By telling employees that employee notices to be posted on the employees' bulletin board had to be signed and okayed by the Respondent before posting, the Respondent has violated Section 8(a)(1) of the Act.

9. By reprimanding and admonishing employees for engaging in organizing activities in the employees' cafeteria, the restrooms, and on company time, the Respondent has violated Section 8(a)(1) of the Act.

10. By staring at an employee for long periods of time following an angry reprimand to said employee for engaging in lawful organizing activities, creating the impression said employee's activities were under surveillance, the Respondent has violated Section 8(a)(1) of the Act.

11. By creating the impression employees' organizing efforts would be futile, the Respondent has violated Section 8(a)(1) of the Act.

12. By implying that nonunion employees would not be laid off by the Respondent, the Respondent has violated Section 8(a)(1) of the Act.

13. By discriminatorily discharging Doug Dixon because he complained during a company-called meeting about working conditions, the Respondent has violated Section 8(a)(1) and (3) of the Act.

14. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, Peck, Incorporated, Bloomington, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[9] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[10] If no exceptions are filed as provided by Sec. 102.46 of the Boards Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Telling employees not to talk with an investigative agent of the National Labor Relations Board.

(b) Promising employees benefits in the midst of their organizing campaign, in an effort to dissuade them from unionizing the Respondent's plant.

(c) Asking employees why they think they need a union and telling them the Respondent would rather deal with them than with a union.

(d) Telling employees it would know who signed cards for the Union, thereby creating the impression that employees' organizing activities were under surveillance.

(e) Telling employees the Respondent has 3000 applications on file and if they are not happy there, they know what they can do.

(f) Telling employees that notices to employees to be posted on the employees' bulletin board must be signed and okayed by the Respondent before posting.

(g) Reprimanding and admonishing employees for engaging in organizing activities in the employees' cafeteria, the restrooms, or on company time.

(h) By staring at an employee for long periods of time following an angry reprimand to said employee for engaging in lawful organizational activities, thereby creating the impression such activities of employees are under surveillance by the Respondent.

(i) By creating the impression employees' organizing efforts would be futile.

(j) Implying that nonunion employees would not be laid off in the event the plant is unionized.

(k) Discriminatorily discharging employees because they complained to management about working conditions.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to Doug Dixon immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights previously enjoyed, and make him whole for any loss of pay suffered by reason of the discrimination against him, with interest, in the manner described in the section of this decision entitled "The Remedy."

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at Respondent's plant and place of business located in Bloomington, Indiana, the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

---

[11] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."